

## TRANSPORTATION DEPARTMENT[761]

### Notice of Intended Action

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Iowa Department of Transportation hereby gives Notice of Intended Action to amend Chapter 112, "Primary Road Access Control," and Chapter 115, "Utility Accommodation," Iowa Administrative Code.

The proposed amendments:

- Reaffirm the principle that access to the primary highway system is controlled.
- Renumber subrules.
- Update the Web site address to reflect the Office of Traffic and Safety's home page.
- Identify the permit approval process for access management and utility accommodation.
- Amend and enhance the Department's methodology concerning the evaluation of a proposed allowance.

- Correct the waiver process so the requirements are consistent with all the requirements in 761—Chapter 11.

Any person or agency may submit written comments concerning these proposed amendments or may submit a written request to make an oral presentation. The comments or request shall:

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to the Department of Transportation, Office of Policy and Legislative Services, 800 Lincoln Way, Ames, Iowa 50010; fax (515)817-6511; Internet E-mail address: [tracy.george@dot.iowa.gov](mailto:tracy.george@dot.iowa.gov).
5. Be received by the Office of Policy and Legislative Services no later than October 25, 2011.

A meeting to hear requested oral presentations is scheduled for Thursday, October 27, 2011, at 10 a.m. at the Administration Building, First Floor South Conference Room, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa.

The meeting will be canceled without further notice if no oral presentation is requested.

After analysis and review of this rule making, no adverse impact on jobs has been found. This rule making should positively impact jobs because it streamlines efficiencies and reduces red tape.

These amendments are intended to implement Iowa Code chapter 306A.

Proposed rule-making actions:

- ITEM 1. Amend rule 761—112.1(306A) as follows:

#### **761—112.1(306A) General information.**

**112.1(1) *Statement of policy.*** The efficiency and safety of a highway depend to a large extent upon the amount and character of interruptions to the movement of traffic. The primary cause of these interruptions is vehicular movements to and from businesses, residences, and other developments along the highway. All primary highways are controlled access facilities. Regulation and overall control of highway access are necessary to provide efficient and safe highway operation and to utilize the full potential of the highway investment.

Accordingly, the department hereby establishes rules for control of access to primary roads highways.

**112.1(2) *Information and forms.*** Information and forms regarding this chapter may be obtained from any of the department's six district offices; the Office of Traffic and Safety, Iowa

Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; or the Internet Web site: <http://www.iowadot.gov/traffic/index.htm>.

~~112.1(2)~~ **112.1(3)** *Considerations.* If the department determines that the literal application of these rules to a specific situation will create or result in an unsafe situation or an unreasonable design, the department shall use sound engineering practices to determine the appropriate design for the specific situation. The appropriate district office shall include justification for the design in the permit or the highway project file, as applicable. This The appropriate design shall address:

- ~~1. a.~~ Safety to the traveling public.
  - ~~2. b.~~ Perpetuation of the traffic-carrying capacity of the highway.
  - ~~3. The impact upon the economy of the state.~~
  - ~~4. c.~~ Protection of the rights of the traveling public and of property owners, including the rights of abutting property owners.
  - ~~d.~~ Topography and geometric limitations and constraints affecting typical engineering standards. Justification for the design must be included in the permit or the highway project file, as applicable.
- 112.1(4)** *Permit approval process.*

a. A district representative may, in response to an application for an access connection to the primary highway system, grant approval for an access permit. The process for inquiring about and applying for an access connection to the primary highway system is through one of the department's six district offices. All applications for access permits must be applied for in the particular district where the entrance is proposed. A district representative will do one of the following: approve the application for an access permit, approve the application for an access permit with conditions, or deny the application for an access permit. The district representative may use the considerations set forth in subrule 112.1(3) in making the decision. The district representative shall notify the applicant of the determination in writing.

b. Upon receipt of a denial letter or if the permit was approved with conditions, the applicant may choose to pursue a waiver from the director of transportation, pursuant to subrule 112.1(5).

~~112.1(3)~~ **112.1(5)** *Waivers.* The director of transportation may, in response to a written request or petition, waive provisions of this chapter. ~~761—Chapter 11 applies, with the following exceptions:~~ in accordance with 761—Chapter 11. The written petition must contain the information as required in 761—subrule 11.5(2) and shall be submitted to the Office of Policy and Legislative Services, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

~~a. If a person is applying for an access permit under this chapter, the person shall submit a related waiver request as an addendum to the application, in lieu of petition for waiver. The request must include:~~

- ~~(1) A description of and citation to the specific rule from which a waiver is requested.~~
- ~~(2) The specific waiver requested.~~
- ~~(3) The relevant facts and reasons the applicant believes will justify the waiver, if they have not already been provided to the department in the application. The applicant should address each of the following:~~
  - ~~1. Why applying the rule will result in an undue hardship to the applicant.~~
  - ~~2. Why waiving the rule will not prejudice the substantial legal rights of any other person.~~
  - ~~3. Whether the provisions of the rule are specifically mandated by statute or another law other than the rule.~~
  - ~~4. How substantially equal protection of the public health, safety, and welfare will be afforded by means other than those prescribed by the rule.~~

~~(4) The names of persons who may be adversely impacted by the grant of the waiver, if known.~~

~~b. In all other cases, a person requesting a waiver shall submit a petition for waiver in accordance with 761—11.5(17A). The petition shall be submitted to the district engineer.~~

~~c. Rescinded IAB 10/12/05, effective 11/16/05.~~

~~d. Rescinded IAB 10/12/05, effective 11/16/05.~~

**112.1(4)** **112.1(6)** *Waivers involving interstate highways.* The department director of transportation shall not waive these rules in access situations involving the interstate highway system, including its ramps, without the approval of the Federal Highway Administration.

~~112.1(5) Contact information.~~ Information and forms regarding primary road access control may be obtained from any of the department's six district offices or from the Office of Traffic and Safety, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010. Forms are available on the department's Internet Web site at the following address: <http://www.dot.state.ia.us/forms/index.htm>.

ITEM 2. Amend rule 761—115.1(306A) as follows:

**761—115.1(306A) General information.**

**115.1(1)** No change.

**115.1(2) Information and forms.** Information and forms regarding this chapter may be obtained from any of the department's six district offices; the Office of Traffic and Safety, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; or the Internet Web site: <http://www.iowadot.gov/traffic/index.htm>.

~~115.1(2)~~ **115.1(3) Considerations.** If the department determines that the literal application of these rules to a specific situation will create or result in an unsafe situation or an unreasonable design, the department shall use sound engineering practices to determine the appropriate design for the specific situation. The appropriate district office shall include justification for the design in the permit or the highway project file, as applicable. This The appropriate design shall address:

- ~~1. a.~~ *a.* Safety of motorists, pedestrians, construction workers and other highway users.
- ~~2. b.~~ *b.* Integrity of the highway.
- ~~3. The impact upon the economy of the state.~~
- ~~4. c.~~ *c.* Protection of the rights of the traveling public and of property owners, including the rights of abutting property owners.
- ~~d.~~ *d.* Topography and geometric limitations and constraints affecting typical engineering standards. Justification for the design must be included in the permit or the highway project file, as applicable.

**115.1(4) Permit approval process.**

*a.* A district representative may, in response to an application for a utility accommodation on the primary highway system grant approval for a utility permit. The process for inquiring about and applying for a utility accommodation on the primary highway system is through one of the department's six district offices. All applications for utility permits must be applied for in the particular district where the utility accommodation is proposed. A district representative will do one of the following: approve the application for a utility permit, approve the application for a utility permit with conditions, or deny the application for a utility permit. The district representative may use the considerations set forth in subrule 115.1(3) in making the decision. The district representative shall notify the applicant of the determination in writing.

*b.* Upon receipt of a denial letter or if the permit was approved with conditions, the applicant may choose to pursue a waiver from the director of transportation, pursuant to subrule 115.1(5).

~~115.1(3)~~ **115.1(5) Waivers.** The director of transportation may, in response to a written request or petition, waive provisions of this chapter. ~~761—Chapter 11 applies, with the following exceptions: in accordance with 761—Chapter 11. The written petition must contain the information as required in 761—subrule 11.5(2) and shall be submitted to the Office of Policy and Legislative Services, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.~~

*a.* ~~If a person is applying for a utility permit under this chapter, the person shall submit a related waiver request as an addendum to the application, in lieu of petition for waiver. The request must include:~~

- ~~(1) A description of and citation to the specific rule from which a waiver is requested.~~
- ~~(2) The specific waiver requested.~~
- ~~(3) The relevant facts and reasons the applicant believes will justify the waiver, if they have not already been provided to the department in the application. The applicant should address each of the following:~~

- ~~1. Why applying the rule will result in an undue hardship to the applicant.~~
- ~~2. Why waiving the rule will not prejudice the substantial legal rights of any other person.~~
- ~~3. Whether the provisions of the rule are specifically mandated by statute or another law other than the rule.~~

~~4. How substantially equal protection of the public health, safety, and welfare will be afforded by means other than those prescribed by the rule.~~

~~(4) The names of persons who may be adversely impacted by the grant of the waiver, if known.~~

~~b. In all other cases, a person requesting a waiver shall submit a petition for waiver in accordance with 761—11.5(17A). The petition shall be submitted to the district engineer.~~

~~c. Rescinded IAB 10/12/05, effective 11/16/05.~~

~~d. Rescinded IAB 10/12/05, effective 11/16/05.~~

~~115.1(4)~~ 115.1(6) *Additional requirement for waivers involving interstate highways.* The department director of transportation shall not waive these rules in utility accommodation and adjustment situations involving the interstate highway system, including its ramps, without the approval of the Federal Highway Administration.

~~115.1(5) Contact information.~~ Information and forms regarding this chapter may be obtained from any of the department's six district offices or from the Office of Traffic and Safety, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.